

CHAPTER 40-04
COMMISSION CITIES, INCORPORATION FROM ORGANIZED TERRITORY AND
change from commission system to council system

40-04-01. Incorporation as commission city. Any city in this state having a population of not less than five hundred inhabitants may become incorporated as a city under the commission system of government in the following manner: whenever one-tenth of the qualified electors of such municipality, based upon the votes cast for the office of governor at the last preceding general election, shall petition the governing body of such municipality to submit to a vote of the qualified electors the question whether such city shall become incorporated as a city under the commission system of government, the governing body shall submit such question to the qualified electors, appoint a time when and place or places where the election shall be held, and designate the judges and clerks at such election. Such question shall not be submitted more than once in every four years.

40-04-02. Notice of election. Notice of an election to be held under this chapter shall be given by the executive officer of the city by publication in the official newspaper of the city as provided in section 40-01-09 for at least twenty days.

40-04-03. Form of ballot. The ballots to be used at such election shall be in substantially the following form:

Shall the city of _____ (naming the city) become organized as a city under the commission system of government?

Yes ☐

No ☐

40-04-04. Returns and canvass of election - Certificate to secretary of state - Officers to continue until election. The officials of an election held under the provisions of this chapter shall make a return of such election to the governing body of the city and such governing body shall canvass such returns and cause the result of the canvass to be entered upon the records of the city. If a majority of the votes cast on the question at such election shall be for city organization under the commission system, the auditor shall certify the adoption of such form of government and a copy of the proceedings concerning the same to the secretary of state together with the result of any special census taken in such city. The city officers then in office shall exercise the powers conferred upon like officers of a city operating under the commission system of government until their successors are elected and qualified.

40-04-05. Patent issued to city by governor. Upon the certification of the matters described in section 40-04-04, the government shall issue letters patent, under the great seal of the state, reciting the facts, defining the boundaries of the city, and constituting the city a body corporate and politic by the name of the city of _____ (specifying the name of the city), and declaring that it shall be governed by the provisions of this title applicable to cities under the commission system of government.

40-04-06. Patent to city to be recorded - Use as evidence. A patent issued by the governor under the provisions of this chapter shall be recorded in the office of the secretary of state in a book kept for that purpose. Any patent so issued and recorded and the record thereof, or a certified copy thereof, shall be conclusive evidence in all courts and places of the due incorporation of the city mentioned therein and of all the facts therein recited.

40-04-07. Special election called to elect city commissioners. Within twenty days after the issuance of a patent incorporating any city under the provisions of this chapter, the executive officer of the city voting such incorporation shall call a special election for the purpose of electing the first board of city commissioners. The election shall be held as provided in section 40-21-02.

40-04-08. Change from or reversion to commission system of government -
Petition required. Any city which shall have operated for more than six years under or since changing from the city commission system of government may change its governmental organization and adopt the city council form of government or the modern council form of government or revert to the city commission form of government. The proceeding to change or revert shall be initiated either by a resolution by the governing body or by a petition asking for such change signed by not less than twenty-five percent of the qualified electors of the city. In no event, however, shall the petition contain less than thirty signatures. In any city having six or more municipal election precincts, not more than twenty percent of the petitioners may reside in any single precinct. For the purpose of this section the term "qualified electors of the city" means the total number of qualified electors voting for the office of the chief executive officer of the city at the preceding city election. The signatures to such petition need not be appended to a single paper, but one of the signers upon each paper shall make oath before an officer competent to administer oaths that each signature appearing upon such paper is the genuine signature of the person whose name it purports to be and that such person purports to be not less than eighteen years of age and a resident of the city. Each petition, in addition to the names of the signers, shall contain the name of the street upon and the number of the house in which each petitioner resides. Any petitioner shall be permitted to withdraw that petitioner's name from a petition within five days after the petition is filed. If the proceeding to change from or revert to a commission system of government is initiated by petition, the question may not be placed on the ballot more often than every four years.

40-04-09. City auditor to pass on sufficiency of petition to change from commission system of government. Within thirty days after a petition to change from the commission system of government is filed, the city auditor shall examine the petition and ascertain whether or not the petition is signed by the required number of qualified electors. The city auditor shall attach to the petition the city auditor's certificate showing the result of the city auditor's examination, and if the city auditor finds the petition to be insufficient the city auditor's certificate shall show the reason for such determination. An insufficient petition may be amended within ten days after the city auditor's certificate is made. Within thirty days after an amended petition is filed, the city auditor shall make an examination thereof, and if the city auditor's certificate shows such amended petition to be insufficient, it shall be returned to the person filing the same without prejudice to the filing of a new petition. If the city auditor shall find the petition or the amended petition to be sufficient, the city auditor shall place the same, with the city auditor's certificate, before the governing body of the municipality.

40-04-10. Procedure when petition to change from or revert to commission system of government is filed - Election - Ballot. When a petition to change from or revert to the commission system of government, together with the city auditor's certificate of sufficiency, is filed with the governing body of a city, or when a resolution to change or revert has been adopted, the governing body shall call a special election at which only the question of changing from or reverting to the commission system of government will be submitted. The date of such election shall not be less than sixty days nor more than ninety days after the date of the auditor's certificate that a sufficient petition has been filed. The ballot to be used at the election shall include the issue presented in the petition or resolution in substantially one of the following forms:

CHANGE FROM COMMISSION SYSTEM OF GOVERNMENT

Shall the city of _____ change from its organization under the commission system of government and become a city under the council form of government?

Yes ☐

No ☐

Shall the city of _____ change from its organization under the commission system of government and become a city under the modern council form of government with a five-man council?

Yes ☐

No ☐

Shall the city of _____ change from its organization under the commission system of government and become a city under the modern council form of government with a seven-man council?

Yes ☐

No ☐

Shall the city of _____ change from its organization under the commission system of government and become a city under the modern council form of government with an eleven-man council?

Yes ☐

No ☐

REVERSION TO COMMISSION SYSTEM OF GOVERNMENT

Shall the city of _____ revert from the council form of government to the commission system of government?

Yes ☐

No ☐

Shall the city of _____ revert from the modern council form of government with a five-man council to the commission system of government?

Yes ☐

No ☐

Shall the city of _____ revert from the modern council form of government with a seven-man council to the commission system of government?

Yes ☐

No ☐

Shall the city of _____ revert from the modern council form of government with an eleven-man council to the commission system of government?

Yes ☐

No ☐

40-04-11. Procedure when election favors changing from commission system of government. If a majority of the votes cast on the question at the election provided for in section 40-04-10 favor the proposition submitted at such election, the officers elected at the next biennial election shall be those prescribed by the provisions of this title relating to cities organized under the city council form of government. Upon the qualification of such officers, the city shall become a city under the council form of government.